

Message Text

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APPROVED BY STANLEY S. CARPENTER DIRECTOR OF TERRITORIAL AFFAIRS

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FM SECSTATE WASHDC

TO CINCPACREP GUAM/TTPI GUAM MARIANA ISLANDS

INFO SECDEF ISA WASHDC

CINCPAC HONOLULU HAWAII IMMEDIATE

C O N F I D E N T I A L STATE 276383

E.O. 11652: N/A

TAGS: PGOV, GQ

SUBJECT: SECRETARIAL ORDER

1. PASS IMMEDIATELY TO AMBASSADOR WILLIAMS FROM DOTA.
REF YOUR 150650Z DEC 74. FOLLOWING IS FINAL REVISED VERSION OF
DRAFT SECRETARIAL ORDER ON RETURN OF PUBLIC LANDS BASED ON
OUR PREVIOUS DRAFT, DOD PROPOSALS, AND RESULTS OF HONOLULU
MEETING. APPRECIATE YOUR REVIEW AND CONCURRENCE SOONEST:(QUOTE)

PROPOSED SECRETARIAL ORDER TO EFFECT THE UNITED STATES POLICY
OF TRANSFERRING TRUST TERRITORY PUBLIC LANDS TO DISTRICT
CONTROL

WHEREAS, THE UNITED STATES GOVERNMENT AS ADMINISTERING
AUTHORITY FOR THE TRUST TERRITORY OF THE PACIFIC ISLANDS
HAS ALWAYS CONSIDERED PUBLIC LANDS IN THE TRUST TERRITORY
TO BE THE PROPERTY OF THE PEOPLES OF THE TRUST TERRITORY,
AND

WHEREAS, THE UNITED STATES RESPONDED TO A FORMAL
REQUEST BY THE JOINT COMMITTEE ON FUTURE STATUS OF THE
CONGRESS OF MICRONESIA FOR THE EARLY TRANSFER OF PUBLIC LANDS IN
EACH DISTRICT TO THE CONTROL AND MANAGEMENT OF THE
PEOPLES OF EACH OF THE SIX ADMINISTRATIVE DISTRICTS BY
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ISSUING A FORMAL POLICY STATEMENT ON NOVEMBER 4, 1973, CON-
SISTENT WITH THE POSITION OF THE JOINT COMMITTEE ON FUTURE
STATUS; AND

WHEREAS, THE CONGRESS OF MICRONESIA WAS INVITED TO PARTICIPATE IN THE TRANSFER BY ENACTING ENABLING LEGISLATION TO EFFECT THIS POLICY, BUT WAS UNABLE TO ENACT ACCEPTABLE GUIDELINES IN CERTAIN IMPORTANT RESPECTS TO IMPLEMENT THIS POLICY,

NOW, THEREFORE, PURSUANT TO THE AUTHORITY VESTED IN ME BY EXECUTIVE ORDER 11021, THE FOLLOWING BASIC ORDER RESPECTING THE GOVERNMENT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS IS ISSUED:

PART I. PURPOSE. THE PURPOSE OF THE ORDER IS TO IMPLEMENT THE PROVISIONS OF THE UNITED STATES POLICY STATEMENT OF NOVEMBER 1, 1973; TO AUTHORIZE AND EMPOWER EACH OF THE DISTRICT LEGISLATURES TO CREATE OR TO DESIGNATE A LEGAL ENTITY WITHIN ITS DISTRICT TO HOLD TITLE TO PUBLIC LANDS WITHIN THAT DISTRICT IN TRUST FOR THE PEOPLE THEREOF AND TO MANAGE OR DISPOSE OF THE SAME; TO AUTHORIZE AND EMPOWER EACH DISTRICT LEGISLATURE TO ENACT LAWS PROVIDING FOR THE EXERCISE OF THE POWER OF EMINENT DOMAIN AND TO ESTABLISH ADJUDICATORY BODIES WHICH MAY UTILIZE TRADITIONAL MEANS, WHEN APPROPRIATE, FOR SETTLEMENT OF CLAIMS TO TITLE OR RIGHTS IN THE LANDS TRANSFERRED; AND TO AUTHORIZE THE HIGH COMMISSIONER TO CONVEY CERTAIN PUBLIC LANDS TO SUCH A LEGAL ENTITY WITHIN EACH DISTRICT.

PART II. DEFINITIONS. AS USED IN THIS ORDER, UNLESS IT IS OTHERWISE PROVIDED OR THE CONTEXT REQUIRES A DIFFERENT CONSTRUCTION, APPLICATION OR MEANING:

(1) "DISTRICT" MEANS ANY ADMINISTRATIVE DISTRICT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS AS DESCRIBED IN SECTION 1, TITLE 3, OF THE TRUST TERRITORY CODE.

(2) "DISTRICT LEGISLATURE" MEANS ANY DISTRICT LEGISLATURE OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS.

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(3) "PUBLIC LANDS" MEANS:

(A) THOSE LANDS DEFINED AS PUBLIC LANDS BY SECTIONS 1 AND 2, TITLE 67, OF THE TRUST TERRITORY CODE EXCEPT THOSE LANDS DESIGNATED AS MILITARY RETENTION LANDS HELD, USED, OR OCCUPIED BY THE UNITED STATES UNDER USE AND OCCUPANCY AGREEMENTS AND NOT RETURNED TO THE PUBLIC DOMAIN, AND,

(B) THOSE LANDS PLACED UNDER CONTROL OF THE "ALIEN PROPERTY CUSTODIAN" AS DEFINED BY SECTION 1, TITLE 27, OF THE TRUST TERRITORY CODE, EXCEPT THOSE LANDS DESIGNATED AS MILITARY RETENTION LANDS HELD, USED, OR OCCUPIED BY THE

UNITED STATES UNDER USE AND OCCUPANCY AGREEMENTS AND NOT RETURNED TO THE PUBLIC DOMAIN.

(4) "LEGAL ENTITY" MEANS, A NON-PROFIT PUBLIC OR MUNICIPAL CORPORATION, TRUST, COUNCIL, BOARD, OR OTHER JURIDICAL, AS DISTINGUISHED FROM A NATURAL, PERSON ESTABLISHED OR DESIGNATED BY A DISTRICT LEGISLATURE WITH THE POWERS, DUTIES AND COMPETENCE SET FORTH IN PART III.

PART III. AUTHORITY OF DISTRICT LEGISLATURES. THE DISTRICT LEGISLATURES ARE HEREBY GIVEN THE EXCLUSIVE AUTHORITY WITHIN THEIR RESPECTIVE DISTRICTS TO:

(1) CREATE OR DESIGNATE A LEGAL ENTITY FOR THE DISTRICT WHICH SHALL HAVE THE EXCLUSIVE COMPETENCE TO REPRESENT THE DISTRICT LEGISLATURE AND SHALL HAVE THE FOLLOWING POWERS, DUTIES, AND CHARACTERISTICS:

(A) PERPETUAL JURIDICAL EXISTENCE.

(B) TO RECEIVE AND HOLD TITLE TO PUBLIC LANDS IN TRUST FOR THE PEOPLE OF THE DISTRICT,

(C) TO ADMINISTER, MANAGE, AND REGULATE THE USE OF LANDS AND INCOME ARISING THEREFROM IN TRUST FOR THE PEOPLE OF THE DISTRICT,

(D) TO SELL, LEASE, EXCHANGE, USE, DEDICATE FOR PUBLIC CONFIDENTIAL

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PURPOSES, OR MAKE OTHER DISPOSITION OF SUCH PUBLIC LANDS PURSUANT TO THE LAWS OF THE DISTRICT IN WHICH THE LAND IS LOCATED,

(E) TO ENTER INTO CONTRACTS, SUE TO BE SUE, AND HAVE SUCH OTHER POWERS AND DUTIES AS MAY BE NECESSARY OR APPROPRIATE TO FURTHER THE PURPOSES OF THIS ORDER, AND

(F) TO NEGOTIATE IN GOOD FAITH, AND EXECUTE BINDING FORMAL AGREEMENTS TO MEET THE LAND REQUIREMENTS OF THE UNITED STATES AS DESIGNATED UNDER THE TERMS OF A FUTURE STATUS AGREEMENT;

(2) ESTABLISH AN ADJUDICATORY BODY TO RESOLVE CLAIMS DISPUTES AS TO TITLES OR RIGHTS IN LAND TRANSFERRED TO THE DISTRICT LEGAL ENTITY; PROVIDED, HOWEVER, THAT NO SUCH BODY SHALL HAVE THE AUTHORITY TO REDETERMINE ANY CLAIM OR DISPUTE AS TO RIGHT OR TITLE TO LAND BETWEEN PARTIES OR THEIR SUCCESSORS OR ASSIGNS WHERE SUCH CLAIM OR DISPUTE HAS ALREADY BEEN FINALLY DETERMINED OR IS IN THE PROCESS OF BEING FINALLY DETERMINED EITHER BY A LAND TITLE OFFICER, BY A LAND COMMISSION OR A COURT OF COMPETENT JURISDICTION, AND ALL FINAL DETERMINATIONS

ARISING THEREFROM SHALL BE RES JUDICATA; AND PROVIDED FURTHER, THAT A CERTIFIED COPY OF ALL DETERMINATIONS OF SUCH ADJUDICATORY BODIES AS TO TITLE OF LANDS WITHIN A DISTRICT SHALL BE RECORDED AS A PUBLIC DOCUMENT WITH THE CLERK OF COURTS OF THE DISTRICT;

(3) ESTABLISH RULES AND REGULATIONS FOR SUCH ADJUDICATORY BODY WHICH MAY INCLUDE USE OF LOCAL, TRADITIONAL RULES NOT IN CONFLICT WITH APPLICABLE LAW; PROVIDED, HOWEVER, THAT THE REQUIREMENTS OF DUE PROCESS SHALL BE INCORPORATED THEREIN WHICH SHALL INCLUDE THE RIGHT TO A TRIAL DE NOVO UPON APPEAL TO THE HIGH COURTS BY ANY PARTY TO A DISPUTE INVOLVING A CLAIM OF TITLE OR RIGHT TO LANDS AND WHO HAS BEEN AGGRIEVED BY THE ADJUDICATION OF THE DISTRICT ADJUDICATORY BODY;

(4) AUTHORIZE THE DISTRICT LEGAL ENTITY TO EXERCISE THE POWER OF EMINENT DOMAIN TO ACQUIRE LAND FOR DISTRICT PUBLIC PURPOSES, AND ENACT LAWS AND ESTABLISH PROCEDURES THEREFOR:

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(5) ESTABLISH A PROGRAM FOR HOMESTEADING ON THE LAND TRANSFERRED TO THE DISTRICT LEGAL ENTITY AND REQUIRE SUCH DISTRICT LEGAL ENTITY TO ADMINISTER SUCH PROGRAM.

PART IV. AUTHORITY OF THE HIGH COMMISSIONER. UPON REQUEST, THE HIGH COMMISSIONER IS AUTHORIZED AND DIRECTED, SUBJECT TO VALID EXISTING RIGHTS, TO TRANSFER AND CONVEY, PURSUANT TO THE PROVISIONS OF THIS ORDER, TO EACH DISTRICT LEGAL ENTITY ALL RIGHT, TITLE AND INTEREST OF THE GOVERNMENT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS IN PUBLIC LANDS, EXCEPT UJELAND ATOLL, WITHIN THEIR RESPECTIVE DISTRICTS.

PART V. RESERVATIONS. NOTWITHSTANDING THE PROVISIONS OF PART IV OF THIS ORDER, THE HIGH COMMISSIONER SHALL NOT CONVEY TO A DISTRICT LEGAL ENTITY ANY RIGHT, TITLE OR INTEREST TO LANDS IN THE FOLLOWING CATEGORIES:

(1) PUBLIC LANDS ACTIVELY USED BY THE CENTRAL GOVERNMENT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS OR BY AGENCIES, INSTRUMENTALITIES, OR POLITICAL SUBDIVISIONS THEREOF AS OF THE EFFECTIVE DATE OF THIS ORDER; PROVIDED, THAT SUCH PUBLIC LANDS IN A DISTRICT SHALL BE TRANSFERRED TO THE DISTRICT'S LEGAL ENTITY UPON A DETERMINATION BY THE HIGH COMMISSIONER THAT SUCH LANDS ARE NO LONGER NEEDED FOR USE BY THE CENTRAL GOVERNMENT;

(2) PUBLIC LANDS SPECIFICALLY DETERMINED BY THE HIGH COMMISSIONER TO BE NEEDED FOR CURRENTLY PLANNED CAPITAL IMPROVEMENT PROJECTS EXTENDING FIVE YEARS FROM THE EFFECTIVE DATE HEREOF; PROVIDED THAT SUCH PUBLIC LANDS IN A DISTRICT SHALL BE TRANSFERRED TO THE RESPECTIVE DISTRICT'S LEGAL ENTITY

UPON DETERMINATION BY THE HIGH COMMISSIONER THAT SUCH LANDS ARE NO LONGER NEEDED BY THE CENTRAL GOVERNMENT; OR UPON A DETERMINATION BY THE DISTRICT THAT A PROJECT FOR WHICH LAND HAS BEEN RESERVED IS NOT WANTED.

(3) PUBLIC LANDS AS TO WHICH THERE ARE VALID HOMESTEAD ENTRY PERMITS, OR CERTIFICATES EVIDENCING COMPLIANCE WITH SUCH PERMITS, AND AS TO WHICH DEEDS HAVE NOT BEEN ISSUED, AS OF THE EFFECTIVE DATE HEREOF.

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PART VI. LIMITATIONS. NOTWITHSTANDING THE PROVISIONS OF PART IV OF THIS ACT, THE HIGH COMMISSIONER SHALL NOT CONVEY ANY RIGHT, TITLE OR INTEREST IN PUBLIC LAND TO ANY DISTRICT LEGAL ENTITY UNTIL THE DISTRICT LEGISLATURE SHALL HAVE ENACTED LAWS SATISFACTORY TO THE HIGH COMMISSIONER, PROVIDING FOR:

(1) A DISTRICT LEGAL ENTITY WITH THE POWERS, DUTIES AND CHARACTERISTICS SET FORTH IN THIS ORDER;

(2) RESERVATION OF THE PARAMOUNT POWER OF EMINENT DOMAIN IN THE CENTRAL GOVERNMENT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS TO TAKE LANDS FOR PUBLIC PURPOSES PURSUANT TO APPLICABLE LAW;

(3) RESERVATION OF THE RIGHT OF THE CENTRAL GOVERNMENT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS TO REGULATE ALL ACTIVITIES AFFECTING CONSERVATION, NAVIGATION, OR COMMERCE IN AND TO THE NAVIGABLE WATERS AND TIDELANDS, FILLED LANDS, SUBMERGED LANDS AND LAGOONS; PROVIDED THAT, IN THE EXERCISE OF SUCH RIGHT, THE CENTRAL GOVERNMENT WILL NOT UNNECESSARILY INTERFERE WITH EXERCISE IN ANY PARTICULAR DISTRICT OF ALL PRIOR TRADITIONAL RIGHTS IN AND TO SUCH LANDS;

(4) COMPLIANCE WITH ALL PROVISIONS OF EXISTING LEASES AND LAND USE AND OCCUPANCY AGREEMENTS PREVIOUSLY ENTERED INTO BY THE CENTRAL OR DISTRICT GOVERNMENTS OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS, THEIR AGENCIES, INSTRUMENTALITIES, OR POLITICAL SUBDIVISIONS;

(5) CONTINUED POSSESSION OF PUBLIC LAND ACTUALLY OCCUPIED AND USED AT THE EFFECTIVE DATE OF THIS ORDER, WITH THE CONCURRENCE OF THE GOVERNMENT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS, BY TENANTS AT WILL AND TENANTS BY SUFFERENCE, FOR A REASONABLE PERIOD OF ADDITIONAL YEARS TO BE MUTUALLY AGREED TO BY THE LEGAL ENTITY AND THE HIGH COMMISSIONER;

(6) RECEIPT, USE AND DISPOSITION PURSUANT TO DISTRICT LAW FOR PUBLIC PURPOSES OF ALL REVENUES DERIVED BY DISTRICT LEGAL ENTITIES FROM PUBLIC LANDS TRANSFERRED TO SUCH

ENTITIES UNDER THIS ORDER;
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(7) ALL TRANSFERS AND CONVEYANCES TO BE MADE SUBJECT
TO ALL VALID AND EXISTING CLAIMS RELATING TO SUCH LAND;

(8) HOLDING THE UNITED STATES GOVERNMENT AND THE CENTRAL
GOVERNMENT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS AND THEIR
AGENCIES OR POLITICAL SUBDIVISIONS HARMLESS FROM ANY AND ALL
CLAIMS ARISING AFTER THE CONVEYANCE OF PUBLIC LAND OTHER THAN
THOSE RESULTING DIRECTLY FROM THE ACTIONS OF THE
UNITED STATES GOVERNMENT, THE GOVERNMENT OF THE TRUST TERRITORY
OF THE PACIFIC ISLANDS OR THEIR DULY AUTHORIZED
AGENTS.

PART VII. TIME OF TRANSFER AND CONVEYANCES. CONVEYANCE
OF RIGHTS, TITLES OR INTERESTS TO PUBLIC LANDS UNDER THIS ACT
TO ANY PARTICULAR DISTRICT LEGAL ENTITY MAY BE MADE AT ANY TIME
AFTER A DISTRICT LEGISLATURE HAS COMPLIED WITH ALL THE
APPLICABLE PROVISIONS OF THIS ACT, PROVIDED, HOWEVER, THAT SUCH
CONVEYANCE SHALL BE MADE WITHOUT UNREASONABLE DELAY.

PART VIII. AMENDMENTS TO TRUST TERRITORY CODE.

(1) SECTION 2, OF TITLE 10, OF THE TRUST TERRITORY
CODE, IS AMENDED TO READ AS FOLLOWS:

"SECTION 2. POWER DENIED PRIVATE CORPORATIONS.
NO PRIVATE CORPORATION EXCEPT AS MAY BE AUTHORIZED BY A DISTRICT
LEGISLATURE SHALL HAVE THE RIGHT OF EMINENT DOMAIN IN THE
TRUST TERRITORY."

(2) SECTION 3, OF TITLE 10, OF THE TRUST TERRITORY
CODE, IS AMENDED TO READ AS FOLLOWS:

"SECTION 3. DEFINITIONS. AS USED IN THIS CHAPTER, THE
FOLLOWING TERMS SHALL HAVE THE MEANINGS SET FORTH
BELOW:

(1) (") EMINENT DOMAIN (").

(A) "EMINENT DOMAIN" IS THE RIGHT OF THE CENTRAL
GOVERNMENT OR A DISTRICT LEGAL ENTITY AS MAY BE PROVIDED
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FOR BY DISTRICT LAW IN ACCORDANCE WITH THE PROVISIONS OF THIS
ORDER TO CONDEMN PROPERTY FOR PUBLIC USE OR PURPOSES AND TO
APPROPRIATE THE OWNERSHIP AND POSSESSION OF SUCH PROPERTY FOR
SUCH PUBLIC USE UPON PAYING THE OWNER A JUST COMPENSATION TO
BE ASCERTAINED ACCORDING TO THE LAW.

(2) SECTION 112 OF TITLE 67 OF THE TRUST TERRITORY
CODE IS HEREBY AMENDED TO READ AS FOLLOWS:

"SECTION 112. CONDUCT OF HEARINGS. IN CONDUCTING HEARINGS, EACH LAND COMMISSION AND EACH LAND REGISTRATION TEAM SHALL BE GUIDED BY THE TRUST TERRITORY RULES OF CIVIL PROCEDURES AND THE RULES OF EVIDENCE. EACH COMMISSION AND EACH REGISTRATION TEAM IS AUTHORIZED TO CONSIDER SUCH EVIDENCE AS WILL BE HELPFUL IN REACHING A JUST DECISION. NEITHER A COMMISSION NOR A LAND REGISTRATION TEAM, HOWEVER, SHALL ENDEAVOR TO REDETERMINE ANY MATTER ALREADY DECIDED BETWEEN THE SAME PARTIES OR THOSE UNDER WHOM THE PRESENT PARTIES CLAIM, BY A COURT, LAND TITLE OFFICER'S DETERMINATION OF OWNERSHIP OR A DETERMINATION OF A LAND COMMISSION. ALL COMMISSIONS AND LAND REGISTRATION TEAMS SHALL ACCEPT SUCH PRIOR DETERMINATIONS AS BINDING ON SUCH PARTIES WITHOUT FURTHER EVIDENCE THAN THE JUDGEMENT OR DETERMINATION OF OWNERSHIP. ALL HEARINGS SHALL BE PUBLIC AND EVERY PERSON CLAIMING AN INTEREST IN LAND UNDER CONSIDERATION SHALL BE GIVEN AN OPPORTUNITY, BY ACTUAL OR CONSTRUCTIVE NOTICE, TO BE HEARD. HEARINGS MUST BE HELD IN THE MUNICIPALITY IN WHICH THE LAND INVOLVED LIES AND WHEN PRACTICABLE SHALL BE HELD IN THE VILLAGE IN WHICH OR NEAR WHICH THE LAND LIES. ALL PARTIES, INCLUDING ANY REPRESENTATIVE (APPOINTED UNDER SECTION 113 OF THIS CHAPTER OR BY A COURT OR OTHER PROPER AUTHORITY) OF A MINOR OR INCOMPETENT, MAY BE REPRESENTED AND ASSISTED BY COUNSEL."

PART IX. CITIZENSHIP OF DISTRICT LEGAL ENTITY. A DISTRICT ENTITY SHALL BE DEEMED TO BE A CITIZEN OF THE TRUST TERRITORY FOR THE PURPOSES OF SECTION 11101 OF TITLE 57 OF THE TRUST TERRITORY CODE; EXCEPT THAT, NO DISTRICT LEGAL ENTITY MAY OWN, HOLD TITLE TO, MANAGE, OR DISPOSE OF ANY LANDS IN ANOTHER DISTRICT THAN THE DISTRICT UNDER
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THE LAWS OF WHICH IT WAS ESTABLISHED OR DESIGNATED.

PART X. POWERS AND DUTIES OF DIVISION OF LANDS AND SURVEYS.

THE STATUTORY POWERS AND DUTIES OF THE DIVISION OF LANDS AND SURVEYS SHALL NOT EXTEND TO PUBLIC LANDS TRANSFERRED TO DISTRICT LEGAL ENTITIES PURSUANT TO THIS ORDER.

PART XI. EFFECTIVE DATE. THIS ORDER SHALL TAKE EFFECT UPON THE DATE OF ITS APPROVAL BY THE SECRETARY OF THE INTERIOR. UNQUOTE. SIGNED STANLEY S. CARPENTER.
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